| Federal Communications Commission | DA 00-262 |
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| Before the Federal Communications Commission Washington, D.C. 20554 | |

| In the Matter of |) | |
|---------------------------------|------|--------------------|
| |) | |
| Amendment of Section 73.202(b), |) M | M Docket No. 00-24 |
| Table of Allotments, |) R1 | M-9781 |
| FM Broadcast Stations. |) | |
| (Red Lodge and Joliet, Montana) |) | |

NOTICE OF PROPOSED RULE MAKING

Adopted: February 2, 2000 Released: February 11, 2000

Comment Date: April 3, 2000 Reply Date: April 18, 2000

By the Chief, Allocations Branch

- 1. Before the Commission for consideration is a Petition for Rule Making filed by Silver Rock Communications, Inc. ("Sliver Rock"), licensee of Station KMXE-FM, Red Lodge, Montana, requesting changes at Red Lodge and Joliet, Montana. Silver Rock has stated its intention to file an application for a new channel at Red Lodge.
- 2. Silver Rock requests the substitution of Channel 257C1 for Channel 257A at Red Lodge, Montana, and modification of its license for Station KMXE-FM to specify operation on Channel 257C1. In support of its request, Silver Rock states that the C1 facility will allow Station KMXE-FM to expand its coverage area, providing a greater and more reliable broadcast service for the residents of Red Lodge and the surrounding area. To accommodate the substitution at Red Lodge, Silver Rock requests that Channel 292C3 be substituted for vacant Channel 259C3 at Joliet, Montana.
- 3. We believe the proposal warrants consideration since the substitution at Red Lodge would provide expanded service to the community. A staff engineering analysis has determined that Channel 257C1 can be allotted to Red Lodge in compliance with the Commission's spacing requirements at Silver Rock's proposed site. To accommodate Channel 257C1 at Red Lodge we shall also propose

Channel 259C3 was allotted to Joliet, Montana, in MM Docket No. 99-12 at the request of Mountain West Broadcasting. The Report and Order allotting Channel 259C3 at Joliet stated that a filing window for applications would not be opened at this time but the issue of opening a window would be addressed by the Commission in a subsequent order. See Report and Order adopted June 11, 1999, DA No. 99-1145 and Public Notice released February 25, 1994, 9 FCC Rcd 1055 (1994) (FCC Freezes Comparative Proceedings).

the substitution of Channel 292C3 for vacant Channel 259C3 at Joliet, Montana.³ As requested, we shall propose to modify the license for Station KMXE-FM, Red Lodge, to specify operation on Channel 257C1 in lieu of Channel 257A. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 257C1 at Red Lodge or require the Silver Rock to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. In view of the fact that the proposed allotment would provide expanded service to Red Lodge, Montana, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 257C1 at Red Lodge. Therefore, we will seek comments on the proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

| | Channel No. | | |
|--------------------|-------------|----------|--|
| Community | Present | Proposed | |
| Red Lodge, Montana | 257A | 257C1 | |
| Joliet, Montana | 259C3 | 292C3 | |

- 5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.
- 6. Interested parties may file comments on or before April 3, 2000, and reply comments on or before April 18, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

Jeffrey D. Southmayd Southmayd & Miller 1220 19th Street, N.W., Suite 400 Washington, D. C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

The coordinates for Channel 257C1 at Red Lodge are 45-11-39 and 109-20-32.

The coordinates for Channel 292C3 at Joliet are 45-29-06 and 108-58-18. Channel 259C3 was allotted to Joliet at the same site.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos Chief, Allocations Branch Policy and Rules Division Mass Media Bureau

APPENDIX

- 1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the <u>Notice of Proposed Rule Making</u> to which this Appendix is attached.
- 2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.
- 3. <u>Cut-off Procedures</u>. The following procedures will govern the consideration of filings in this proceeding.
 - (a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).
 - (b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.
 - (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.
- 4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D, C. 20554.

- 5. <u>Number of Copies</u>. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.
- 6. <u>Public Inspection of Filings.</u> All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.